

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**VICTOR TAMAYO and
BONFILIO AVILES,**

Defendants.

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CASE NO. 8:09CR66

**MEMORANDUM
AND ORDER**

This matter is before the Court on the motion to reconsider (Filing No. 57) filed by the Defendant, Victor Tamayo, construed as an appeal from the Magistrate Judge's order (Filing No. 54) denying the Defendant's motion to continue trial. The Magistrate Judge also denied the government's motion to continue trial. (Filing No. 56.)

Under 28 U.S.C. § 636(b)(1)(A), the Court has reviewed the order from which this appeal has been taken. In an appeal from a magistrate judge's order on a pretrial matter within 28 U.S.C. § 636(b)(1)(A), a district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A).

Defense counsel included with the appeal a signed speedy trial waiver and a doctor's letter explaining that counsel's ability to concentrate due to pain and medication will be affected until approximately June 26, 2009.

The undersigned Judge respects Magistrate Judge F.A. Gossett's discretion exercised in this matter, and the Court concludes that his order is not clearly erroneous or contrary to law. However, the exhibits filed with the appeal demonstrate good cause for the requested extension. The Court finds that, under the circumstances presented, the ends of justice outweigh the best interests of the public and the Defendants in a speedy

trial, and the failure to grant a continuance would result in a miscarriage of justice. 18 U.S.C. §§ 3161(h)(7)(A) & (B). Therefore, the Defendant's appeal will be granted.

IT IS ORDERED:

1. The appeal from the Magistrate Judge's order (Filing No. 57) filed by the Defendant, Victor Tamayo, is granted;
2. The Magistrate Judge's order (Filing No. 54) is overruled;
3. Trial in this matter is continued to July 21, 2009, with the attorneys meeting in chambers at **8:30 a.m.**;
4. The time between today's date and the trial date is excluded for purposes of computing the limits under the Speedy Trial Act because the ends of justice outweigh the best interest of the Defendant in a speedy trial and for the reasons stated in the Memorandum. 18 U.S.C. §§ 3161(h)(8)(A) & (B). Any objection to this speedy trial exclusion must be filed within five (5) business days of the filing date of this order.

DATED this 16th day of June, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge